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Utah v. Carlos Maurice Hearon : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, Plaintiff/Appellee, vs. CARLOS MAURICE HEARON, Defendant/Appellant.	))))))	Case No. ~~20020263-CA~~ hpo 20020663-CA

REPLY BRIEF OF APPELLANT

APPEAL FROM CONVICTION FOR POSSESSION OR USE OF A CONTROLLED SUBSTANCE, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 58-37-8(2)(a)(i), IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE STANTON M. TAYLOR, PRESIDING

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INTRODUCTION

The State has made two basic points in their brief. First, that the errors were harmless, or that absent the errors the "defendant would have enjoyed the likelihood of a more favorable trial outcome." (Appellee Br. at 6, see also pages 3,10, and 16) Second, that the Defendant "opened the door to the subject[s]" (Appellee Br. at. 9 and 14) The Defendant will address these issues in reverse order.

POINT I

THE DEFENDANT DID NOT OPEN THE DOOR TO THE SUBJECTS OF THE THEFT OF THE MUSTANG AND THE FACT THAT THE DEFENDANT'S CHILDREN WERE IN THE CUSTODY OF DCFS.

A. DCFS custody of the Defendant's children.

The State has made the claim that the Defendant during trial opened the door to the questioning concerning the fact that the Defendant's children were in the custody of the Division of Child and Family Services (DCFS). The State claims: "The matter at issue here came up not during the State's case, but during defendant's case, while defense counsel was questioning his only witness, defendant's wife." (Appellee Br. at 8) Although the only time the defense counsel objected to this area of evidence occurred during the cross-examination of the defendant's wife, the issue had long before been repeatedly referred to by the State.

Not two pages into the prosecutions opening statement the prosecutor stated: "So 900 Century Drive is in the area of the Offices of Division of Child Welfare, Family Services..." (R. 074/ pg 7) Both of the officers, who were the only real fact witnesses in the State's case[1], testified that the Defendant was arrested in the area of DCFS.

The questioning of defense counsel which supposedly "opened the door" to the inquiry by the State "Why was the reason [sic] for the trip to DCFS" and "Where were [the children]" (R. 074/ 69) were some non-responsive answers to defense counsel questions that merely reaffirmed the fact that the area of arrest was the DCFS facility, a fact already referred to on numerous occasions during State's case in chief. Furthermore, the only possible motive of the State's inquiry in to the reason for the trip to DCFS and the question eliciting the response that the children were in "State's custody" was to prejudice the jury against the Defendant in a questionable case.

B. Theft of Mustang vehicle

The State has made the claim that the issue of the Defendant being a suspect in the theft of the Mustang vehicle was also as a result of the Defendant opening

[1] The other two State witnesses Dave Stanger and Julianna Taylor were the evidence custodian and the criminalist who analyzed the residue.

the door. (Appellee Br. at 13) While the State acknowledges that the prosecutor made reference to the auto theft in his opening statement, and repeatedly during the testimony of both main fact witnesses, they thereafter claim that the question "In fact the vehicle was registered to someone else" was permissible since the defense witness opened the door.

Next, the State takes the position that since defense counsel spends two paragraphs in closing argument explaining the Mustang, he has invited the error through trial strategy[2]. Even a cursory reading of those two paragraphs (which is approximately ¼ of defense counsel's entire closing argument) reveals that the purpose of this explanation is to attempt to rectify the misconception that the Defendant was a car thief.

The reality of the situation is that by the time the prosecutor's line of questioning to the Defendant's wife arrived, the prosecutor had referenced the theft of the Mustang no fewer than 11 times. And by the time the defense tries to explain away the Mustang issue in closing argument it had been referred to by the

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[2] The State claims: "Here, any improper questioning by the State was more than overshadowed by defense counsel's own remarks during his closing statement. Apparently choosing as a matter of trial strategy to defuse defendant's wife's testimony by explaining it further, defense counsel's closing argument so overemphasized defendant's involvement in the unrelated car theft case that any previous mention of it by the State was rendered de mininis by comparison" (Appellee Br. at 14)

prosecutor no fewer than 5 additional times, including twice in closing. To maintain that the **defendant** somehow opened this Pandora's box is to defy reality.

POINT II

THE ADMISSION OF EVIDENCE CONCERNING THE MUSTANG VEHICLE, DCFS AND THE DEFENDANT'S HOMELESS STATUS DID PREJUDICE THE OUTCOME OF THE TRIAL.

The State makes the claim that even if the trial court committed error and plain error in allowing evidence of the Defendant's homelessness status, the Mustang vehicle, and repeated references to DCFS, the errors were harmless, since the proof of guilt was sufficiently strong to warrant a conviction without these references. Logic tells us otherwise.

A careful reading of the trial transcript reveals that either the trial prosecutor was unbelievably bumbling and totally detached from reality, or he recognized the weakness of his case and attempted to bolster that weakness by painting a picture of a car stealing, child abusing, homeless good for nothing defendant, who among other numerous failings, possessed methamphetamine. There simply is no plausible reason to ask questions of the Defendant's homeless status. The State so much as acknowledges this fact by its failure to propound any legitimate reason in its brief.

Likewise, there is no reason to refer to the alleged stolen Mustang repeatedly throughout the trial. The lone reason put forth by the State for this evidence is foundation. The flaw in this logic is that this type of foundational evidence is

completely unnecessary, and the danger of unfair prejudice to the Defendant is enormous. If the trial prosecutor truly used this evidence solely for foundation, then he laid and re-laid his foundation more often than Appellant's counsel has ever seen in 18 years of extensive trial practice. Logic and reason guide us to the only conclusion that the prosecutor repeatedly used the "stolen" Mustang evidence to prejudice the jury against the Defendant due to his realization of a weak case. How else can one explain the prosecutor's request to the jury in closing: "And let's see what we can infer about her testimony there. They don't park at the DCFS building; they park a block and a half, two blocks away at least."(R. 074/ at 91)

The repeated references to DCFS throughout trial were a similar attempt to prejudice the jury against the defendant. Again, no reason is suggested by the State as to the necessity that this information be presented to the jury. The danger of unfair prejudice is real, and the prosecution's calculated effect of this evidence is established by the result.

If there were one or two isolated incidents of this type of evidence during a lengthy trial, it could be overlooked. But where the bulk of the prosecution's case rested on these improper inferences rather than on evidence of intent or knowledge of the possession by the Defendant, justice requires reversal and a new trial. For the prosecutor to spend 32% of his trial time on this prejudicial evidence is wrong.

CONCLUSION

Based upon the foregoing, the Defendant respectfully requests that this court reverse his conviction and remand the case for a new trial.

DATED this 23rd day of January, 2003.

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CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Reply Brief of Appellant to Karen Klucznik, Assistant Attorney General, Attorney for the Plaintiff, 160 East 300 South, 6th Floor PO Box 140854 SLC, Utah 84114-0180, postage prepaid this 23 day of January, 2003.

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